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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 v.

11 DEAN R. SHELTON,

12 Defendant.  
13

NO. CR-07-028-RHW

**ORDER DENYING  
DEFENDANT'S MOTION FOR  
RULE 29 JUDGMENT OF  
ACQUITTAL**

14 Before the Court is Defendant's Motion for Rule 29 Judgment of Acquittal  
15 (Ct. Rec. 79). The motion was heard without oral argument.

16 On July 31, 2007, the jury found Defendant guilty of the offense of  
17 Unlawful Possession of a Firearm in violation of 18 U.S.C. § 922(g). After an  
18 extension of time to file his motion was granted, Defendant filed the instant motion  
19 on September 10, 2007.

20 **DISCUSSION**

21 Defendant asks the Court to acquit him of the charge of Unlawful Possession  
22 of a Firearm. Defendant asserts that there is insufficient evidence as a matter of  
23 law to sustain a conviction for this charge.

24 Under Rule 29, the Court can enter a judgement of acquittal, if, after viewing  
25 the evidence in the light most favorable to the Government, it finds that no rational  
26 jury could find Defendant guilty beyond a reasonable doubt. *United States v.*  
27 *Moses*, 496 F.3d 984, 985 (9<sup>th</sup> Cir. 2007)(*quoting Jackson v. Virginia*, 443 U.S.  
28 307, 319 (1979)).

**ORDER DENYING DEFENDANT'S MOTION FOR RULE 29 JUDGMENT  
OF ACQUITTAL ~ 1**

1 In order to sustain a conviction for Unlawful Possession of a Firearm, the  
2 Government needed to prove beyond a reasonable doubt that Defendant knowingly  
3 possessed a firearm; the firearm had been shipped or transported from one state to  
4 another; and at the time Defendant possessed the firearm, Defendant had been  
5 convicted of a crime punishable by imprisonment for a term exceeding one year.  
6 *United States v. Johnson*, 459 F.3d 990, 995 (9<sup>th</sup> Cir. 2006).

7 The later two elements were established at trial through expert testimony  
8 regarding the interstate commerce nexus and through the Defendant's stipulation  
9 that he had been convicted of a felony prior to the date of the charged offense. The  
10 question, then, is whether the evidence was sufficient for the jury to find that  
11 Defendant knowingly possessed the firearm.

12 The evidence against Defendant, though not overwhelming, was sufficient to  
13 support a conviction for Unlawful Possession of a Firearm. Defendant argues that  
14 the only circumstantial evidence offered to prove that he knowingly possessed the  
15 firearm was that he initially refused to exit the car after telling officers he had done  
16 nothing wrong. Defendant's argument ignores the fact that the firearm was found  
17 in the paneling on the driver's door, that Defendant was driving the vehicle  
18 immediately prior to the firearm being found, and that Defendant owned the  
19 vehicle in which the firearm was located. Although Defendant's theory was that  
20 the gun belonged to the passenger, Mr. Santos, the circumstantial evidence  
21 supporting this theory was that Mr. Santos was uncooperative, had an outstanding  
22 warrant, was a convicted felon, and was seen sitting alone in the vehicle prior to  
23 the officers locating the firearm in the Defendant's car. The jury was free to reject  
24 this argument, and find instead that based on the circumstantial evidence set forth,  
25 Defendant knowingly possessed the firearm.

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**ORDER DENYING DEFENDANT'S MOTION FOR RULE 29 JUDGMENT  
OF ACQUITTAL ~ 2**

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Defendant's Motion for Rule 29 Judgment of Acquittal (Ct. Rec. 79) is  
3 **DENIED.**

4 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
5 Order and to provide copies to counsel.

6 **DATED** the 26<sup>th</sup> day of October, 2007.

7 *S/ Robert H. Whaley*

8 ROBERT H. WHALEY  
9 Chief United States District Judge

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